

**Small Claims
Final Determination
Findings and Conclusions**

Petition: 45-001-13-1-5-00307-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-32-129-006.000-001¹
Assessment Year: 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated the 2013 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on December 9, 2015. On January 26, 2016, Petitioner filed the Form 131 with the Board.
2. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on July 10, 2017. Neither the ALJ nor the Board inspected the property.
4. James Nowacki, Petitioner, was sworn as a witness. Robert W. Metz and Joseph E. James, Lake County Hearing Officers were sworn as witnesses for Respondent.

Facts

5. The subject property is a vacant lot located at 4530 Taft Street in Gary.
6. For 2013, the PTABOA determined the assessed value was \$400.
7. Petitioner requested an assessed value of \$0.

Record

8. The official record contains the following:

¹ On the Form 131 Petitioner entered the parcel number as 45-08-32-006.000-001.

a. A digital recording of the hearing,

b. Exhibits:

Respondent Exhibit 1: Property record card (“PRC”) for the subject property,

Respondent Exhibit 2: GIS map,

Respondent Exhibit 3: List of comparable properties’ sales,

Board Exhibit A: Form 131 petition and attachments,

Board Exhibit B: Notice of hearing

Board Exhibit C: Hearing sign-in sheet,

c. These Findings and Conclusions.

Burden

9. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
10. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code 6-1.1-15-17.2(b).
11. Second, Ind. Code 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. The assessed value was the same for 2012 and 2013. Petitioner, therefore, has the burden of proof.

Summary of Parties' Contentions

14. Petitioner's case:
 - a. Petitioner contends the property does not exist and that the county and the township have generated a fictitious PRC and fictitious tax bills, which shows an overall lack of attention to the assessment process. Consequently, Petitioner contends the property should be assessed at \$0. *Nowacki testimony*.
15. Respondent's case:
 - a. Respondent contends the property does exist. He argues that the property consists of a street and admits he does not know how Petitioner was able to acquire a street. He contends that only a municipality is permitted own a street. *Metz testimony; Resp't Ex. 2*.
 - b. Respondent agrees with Petitioner that the assessed value should be \$0. He suggests that Petitioner may be able to file for a refund with the auditor's office for the taxes he has paid on the property. *Metz testimony*.

ANALYSIS

16. Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance ("DLGF") has defined as the property's market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 Real Property Assessment Manual at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property's market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. See *Id*; see also, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
17. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); see also *Long v.*

Wayne Township Assessor, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the assessment at issue in this appeal was March 1, 2013. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2 (c).

18. Petitioner contends that the parcel does not exist and that the assessed value for 2013 should be \$0. Petitioner, however, presented no evidence to support that claim. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
19. Respondent, on the other hand, presented an aerial map and PRC for the subject property contending that the parcel does exist, although it is designated as a street. Respondent contends that only a municipality is eligible to own a street. Respondent agrees that the 2013 assessed value should be \$0.
20. Petitioner failed to make a prima facie case for changing the assessment to \$0. Nonetheless, Respondent agrees that the assessed value should be \$0. Consequently, we find the 2013 assessment should be reduced to \$0.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 assessed value should be changed to \$0.

ISSUED: October 4, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

James Nowacki
(4530 Taft)
Findings and Conclusions
Page 4 of 5

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.